

REMARKS

The Examiner's rejection of claims 1, 6, 15 and 34-35 under 35 U.S.C. §102(e) for being anticipated by the Kish, et al. U.S. Patent No. 6,161,938, of claims 45-49 under 35 U.S.C. §102(e) for being anticipated by the Yu, et al. U.S. Patent No. 6,299,323 and of claims 19, 22, 26 and 53 under 35 U.S.C. §102(b) for being anticipated by the Montgomery U.S. Patent No. 4,535,392 as these rejections may be attempted to be applied to the amended claims 1-53, are respectfully traversed.

First of all, it is noted that claims 7-9, 11, 16-18, 27, 30-32, 36-43, and 50-51 have been found to contain allowable subject matter and were indicated as being allowable if rewritten into independent form including all the limitations of the base claim and any intermittent claims. These claims 7-9, 11, 16-18, 27, 30-32, 36-43 and 50-51 are rewritten in this amendment into independent form to include all of the limitations of the base claim and any intervening claims.

In support of the traverse of the rejections of the other claims, it is first of all noted that Kish, et al. does not disclose or suggest a generally flat housing, a generally flat battery pack, a recess in said housing opening onto an outer peripheral edge surface of the housing or an opening, namely applicant's opening 56 in the battery frame or housing 12 communicating with the battery receiving recess 30 into which a cylindrical post 160 on a battery pack can be inserted, from inside the recess for locating the battery pack in the recess 30 or from outside the flashlight for assisting in ejecting a discharged battery pack from the housing.

The recess 30 in the generally flat housing 12 is adapted to receive a generally flat battery pack having a post 160 on the bottom thereof which is received into the opening 56 in the battery frame or housing 12.

By the present amendment, applicant has amended independent claim 19 to call for opposite side surfaces and an outer peripheral edge surface with the battery receiving recess extending into the housing from said peripheral edge surface. No such structure is shown or suggested by Kish et al. which uses C-cell batteries 44a-d or a battery pack 42 of the same general shape as four c-cell batteries, which are received in a battery compartment 26 in a casing 22 which is not generally flat. Nor does the battery compartment extend into the flashlight housing from an outer peripheral edge surface thereof.

The same can be said with respect to claim 34 which now also calls for a

generally flat housing having a substantially greater longitudinal length than thickness so as to define laterally opposite side surfaces and an outer peripheral edge surface with a battery receiving recess extending into the housing from the peripheral edge surface. This claimed structure is not disclosed in or suggested by Kish et al.

As for claim 45, this claim calls for a generally flat battery holder for receiving a coin shaped battery (a coin also being generally flat).

Applicants also note that while Yu et al. uses a coin shaped battery and includes a generally flat housing, Yu et al. does not teach or suggest a generally flat battery holder having generally parallel opposite external walls defining a generally flat cavity therebetween adapted to enclose at least one coin type battery having side surfaces of opposite polarity, and the battery holder being configured generally flat to enable insertion through the peripheral edge surface of a flashlight housing into a battery receiving recess as called for in amended claim 45. Nor does Yu et al. teach or suggest a battery holder having external walls each having an opening therein enabling access to the opposite polarity sides of the battery.

Claims 3, 11, 26, 27, 41, 48 and 50 call for an opening in the housing communicating with the battery receiving recess for receiving a pusher member for assisting in ejecting the battery pack and claims 4, 11, 27, 43 and 50 call for the battery pack to have a post which can serve as the pusher member.

Applicants submit that none of the references cited by the Examiner disclose or teach this structure, namely, an opening in a flashlight housing communicating with a modular power source or battery pack received in the recess in the housing or a post extending from a modular power source or battery pack for being received in the opening into the recess which receives the modular power source or battery pack.

Looking at Kish, et al. the Examiner has referred to pusher member 80, 82, and 84. Applicants' attorney's inspection of Kish, et al. does not find any reference in the specification to a pusher member or post. What a clear reading of Kish, et al. reveals is that "a plurality of recharging spring contacts 80, 82, 84 are fixed at the bottom of the rear wall 85 of pack 42, the spring contacts engaging against the recharging spring contacts 86, 88 and 90, respectively, mounted within recess 92, 94, and 96, respectively provided at the rear wall 91 at the body portion

24 and base 25 (column 4, lines 11-16).

Clearly, the recharging spring contacts 80, 82 and 84 are in no way similar to or suggestive of applicant's post 160 on a battery pack. Nor do they function in the same way as applicant's post 160.

Furthermore, there is no structure in Kish, et al. equivalent to a housing 12 having an opening 56 communicating with a recess 30 in the housing adapted to receive a battery pack.

The same can be said for the Yu, et al. U.S. Patent No. 6,299, 323.

The Examiner contends that Yu, et al. has an opening communicating with a recess wherein a battery holder has an external boss 20 adapted to be received in a recess when a battery pack is fully inserted into the recess.

Applicant's attorney's inspection of Yu, et al. failed to discover any such structure. First of all, 20 is an upper panel having an aperture 24. The aperture 24 is adapted to receive a boss portion 26 of a switch generally shown at 28.

If the Examiner is referring to boss 26, this is a boss of a switch not a boss or post on a battery pack or modular power source.

Yu, et al. discloses a battery 40 which is received in a recess 38 in the lower panel 18. The battery 40 is received in the recess 38 and the sliding switch 28 is received over the battery and has the boss 26 which extends outwardly into the aperture 24 in the upper panel 20.

Note that the aperture 24 is not equivalent to applicants opening 56 which is adapted to receive, from the inside of the housing, a locating post or, from the outside of the housing, a pusher member for assisting in ejecting a discharged battery pack.

Clearly, the aperture 24 is not equivalent to applicant's opening 56. In this respect pushing on the boss 26 in no way functions to push the battery 40 out of the recess 38.

Such an opening 56 as called for in applicant's amended claims would have to be in the lower panel 18 and opening into the recess 38. No such structure is provided in Yu, et al. Furthermore, the battery 40 is not slideable into and out of the recess 38 and is locked into place by and between the upper and lower panels 18 and 20. The only way the battery can be removed is if one engages a fingernail in the recess 78 on the underside of panel 20 and above the panel 18 to pull the snap-fitted panels 18 and 20 apart. This structure is clearly different than

applicant's claimed structure and in no way suggests or teaches applicant's claimed structure.

The Examiner has contended that Montgomery discloses a housing including (FIG. 3) an opening communicating with a recess so as to enable insertion of a pusher member into the opening to at least partially eject a battery pack from the recess when disposed therein.

FIG. 3 of Montgomery is a cross-section of Montgomery's alert signal which is taken along line 3-3 of FIG. 2. Here a bottom wall 40 extends across the entire length and width of a body casing 30. There is no opening through the bottom wall 40 into the hollow interior in which is received a battery 18. Thus, there is no structure equivalent to applicant's opening 56 and applicant's housing 12 for inserting a pusher member through the opening 56 into the housing 12 into a recess 30 for assisting in removing a battery therefrom.

While FIG. 6 of Montgomery shows an opening through a wall 76 for inserting a plug 174 into a hollow interior of a casing 12 for recharging a rechargeable battery 18 in the casing 12, the plug 174 is fixed in place and is not utilized in anyway for ejecting the battery 18 from the hollow interior of the casing 12.

The Padden U.S. Patent No. 5,893,631 has been cited in combination with the Montgomery patent in rejecting claims 12-14 and in a rejection of claims 24-25, 26, 29, 33 and 34.

An inspection of Padden does not reveal an opening in upper housing plate 82 or lower housing plate 84 to a recess 34 which receives a battery 22.

Thus, none of the references cited by the Examiner considering them singularly or in combination teach or disclose a battery housing having an opening communicating with a recess in the housing for locating a battery pack having a post extending therefrom in the recess or to enable insertion of a pusher member from outside the housing into the opening to at least partially eject the battery pack from the recess when the battery pack is disposed in the recess.

It is interesting to note, that while the Examiner has rejected applicant's claims directed to the feature of the opening in the housing, which is now defined even more clearly in amended claims 3, 11, 26, 27, 41, 48 and 50, the Examiner had indicated claim 41 covering this feature to be allowable.

Furthermore, while the Examiner had rejected claim 44 directed to the nail

nick or notch formed in the battery holder for facilitating insertion of a thumb or fingernail for removing the battery holder from the recess 56, no such structure is disclosed in the references cited, particularly the Yu, et al. patent cited by the Examiner.

While Yu, et al. discloses a notch 78 for enabling one to stick a fingernail between the upper and lower panels 18 and 20 for pulling the upper and lower panels 18 and 20 apart this structure is not the same as the nick or notch in a battery pack for assisting in removing a battery holder from a recess.

Claims 54-58 have been added to provide applicants with protection over a modular power source/battery pack, alone or in combination with a flashlight housing, having, respectively, a fingernail receiving nick and/or a locating arm received in a locating notch in the flashlight housing adjacent the modular power source/battery pack receiving recess.


None of the prior art disclose or suggest a modular power source/battery pack having these structural features.

Furthermore, while the Padden U.S. Patent No. 5,893,631 discloses an LED, leads, and a modular power source, namely a battery 22, none of the four U.S. Patents relied upon by the Examiner disclose, suggest or teach the novel and unobvious structure now defined even more clearly in the amended independent claims 7, 11, 16, 19, 30, 33, 34, 36, 42, 44, 45 50 54 and 56.

In summary, applicant submits that all the independent claims 7, 11, 16, 19, 30, 33, 34, 36, 42, 44, 45 50, 54 and 56 and all the claims dependent upon these claims, in addition to the claims indicated as having allowable subject matter and now rewritten, are clear of the art and otherwise in condition for the allowance.

An earnest endeavor has been made to place the claims of this application into condition for allowance and an early and favorable action to that end is requested.

Respectfully submitted,
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